

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 727 & 890

AN ACT

To repeal sections 197.305, 197.315, 197.320, 197.366, and 354.095, RSMo, and to enact in lieu thereof four new sections relating to certificates of need.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 197.305, 197.315, 197.320, 197.366, and 354.095, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 197.305, 197.315, 197.320, and 354.095, to read as follows:

197.305. As used in sections 197.300 to [197.366] 197.367, the following terms mean:

(1) "Affected persons", the person proposing the development of a new institutional health service, the public to be served, and health care facilities within the service area in which the proposed new health care service is to be developed;

(2) "Agency", the certificate of need program of the Missouri department of health and senior services;

(3) "Capital expenditure", an expenditure by or on behalf of a health care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance;

(4) "Certificate of need", a written certificate issued by the committee setting forth the committee's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by sections 197.300 to [197.366] 197.367;

(5) "Committee", the Missouri health facilities review committee;

(6) "Department", the Missouri department of health and senior services;

~~[(5)]~~ (7) "Develop", to undertake those activities which on their completion will result in the offering of a new institutional health service or the incurring of a financial obligation in relation to the offering of such a service;

~~[(6)]~~ (8) "Expenditure minimum" shall mean:

(a) For beds in existing or proposed health care facilities licensed pursuant to chapter 198 and long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, six hundred thousand dollars in the case of capital expenditures~~[, or four hundred thousand dollars in the case of major medical equipment,];~~ provided, ~~however,~~ that prior to January 1, 2003, the expenditure minimum for beds in such a facility and long-term care beds in a hospital described in section 198.012 shall be zero, subject to the provisions of subsection 7 of section 197.318;

(b) For beds ~~or equipment~~ in a long-term care hospital meeting the requirements described in 42 CFR~~[, Section]~~ 412.23(e), the expenditure minimum shall be zero; and

(c) For health care facilities, new institutional health services or beds not described in paragraph (a) or (b) of this subdivision one million dollars in the case of capital expenditures~~[, excluding major medical equipment, and one million dollars in the case of medical equipment];~~

(9) "Health care facilities":

(a) Facilities licensed under chapter 198;

(b) Long-term care beds in a hospital, as described in subdivision (3) of subsection 1 of section 198.012; and

(c) Long-term care hospitals or beds in a long-term care hospital meeting the requirements described in 42 CFR 412.23(e);

[(7)] (10) "Health service area", a geographic region appropriate for the effective planning and development of health services, determined on the basis of factors including population and the availability of resources, consisting of a population of not less than five hundred thousand or more than three million;

[(8) "Major medical equipment", medical equipment used for the provision of medical and other health services;

(9)] (11) "New institutional health service":

(a) The development of a new health care facility costing in excess of the applicable expenditure minimum;

(b) The acquisition, including acquisition by lease, of any health care facility[, or major medical equipment] costing in excess of the expenditure minimum;

(c) Any capital expenditure by or on behalf of a health care facility in excess of the expenditure minimum;

(d) Predevelopment activities [as defined in subdivision (12) hereof] costing in excess of one hundred fifty thousand dollars;

(e) Any change in licensed bed capacity of a health care facility licensed under chapter 198 which increases the total number of beds by more than ten or more than ten percent of total bed capacity, whichever is less, over a two-year period, provided that any such health care facility seeking a nonapplicability review for an increase in total beds or total bed capacity in an amount less than described in this paragraph shall be eligible for such review only if the facility has had no patient care class I deficiencies within the last eighteen months and has maintained at least

an eighty-five percent average occupancy rate for the previous six quarters;

(f) Health services, excluding home health services, which are offered in a health care facility and which were not offered on a regular basis in such health care facility within the twelve-month period prior to the time such services would be offered;

(g) A reallocation by an existing health care facility of licensed beds among major types of service or reallocation of licensed beds from one physical facility or site to another by more than ten beds or more than ten percent of total licensed bed capacity, whichever is less, over a two-year period;

[(10)] (12) "Nonsubstantive projects", projects which do not involve the addition, replacement, modernization or conversion of beds or the provision of a new health service but which include a capital expenditure which exceeds the expenditure minimum and are due to an act of God or a normal consequence of maintaining health care services, facility or equipment;

[(11)] (13) "Person", any individual, trust, estate, partnership, corporation, including associations and joint stock companies, state or political subdivision or instrumentality thereof, including a municipal corporation;

[(12)] (14) "Predevelopment activities", expenditures for architectural designs, plans, working drawings and specifications, and any arrangement or commitment made for financing; but excluding submission of an application for a certificate of need.

197.315. 1. Any person who proposes to develop or offer a new institutional health service within the state [must] shall obtain a certificate of need from the committee prior to the time such services are offered.

2. Only those new institutional health services which are found by the committee to be needed shall be granted a certificate of need. Only those new institutional health services which are granted certificates of need shall be offered or developed within the state. No expenditures for new institutional health services in excess of the applicable expenditure minimum shall be made by any person unless a certificate of need has been granted.

3. After October 1, 1980, no state agency charged by statute to license or certify health care facilities shall issue a license to or certify any such facility, or distinct part of such facility, that is developed without obtaining a certificate of need.

4. If any person proposes to develop any new institutional health care service without a certificate of need as required by sections 197.300 to ~~197.366~~ 197.367, the committee shall notify the attorney general, and he shall apply for an injunction or other appropriate legal action in any court of this state against that person.

5. After October 1, 1980, no agency of state government may appropriate or grant funds to or make payment of any funds to any person or health care facility which has not first obtained every certificate of need required pursuant to sections 197.300 to ~~197.366~~ 197.367.

6. A certificate of need shall be issued only for the premises and persons named in the application and is not transferable except by consent of the committee.

7. Project cost increases, due to changes in the project application as approved or due to project change orders, exceeding the initial estimate by more than ten percent shall not be incurred without consent of the committee.

8. Periodic reports to the committee shall be required of any applicant who has been granted a certificate of need until the project has been completed. The committee may order the forfeiture of the certificate of need upon failure of the applicant to file any such report.

9. A certificate of need shall be subject to forfeiture for failure to incur a capital expenditure on any approved project within six months after the date of the order. The applicant may request an extension from the committee of not more than six additional months based upon substantial expenditure made.

10. Each application for a certificate of need must be accompanied by an application fee. The time of filing commences with the receipt of the application and the application fee. The application fee is one thousand dollars, or one-tenth of one percent of the total cost of the proposed project, whichever is greater. All application fees shall be deposited in the state treasury. Because of the loss of federal funds, the general assembly will appropriate funds to the Missouri health facilities review committee.

11. In determining whether a certificate of need should be granted, no consideration shall be given to the facilities [or equipment] of any other health care facility located more than a fifteen-mile radius from the applying facility.

12. When a [nursing] long-term care facility shifts from a skilled to an intermediate level of nursing care, it may return to the higher level of care if it meets the licensure requirements, without obtaining a certificate of need.

13. In no event shall a certificate of need be denied because the applicant refuses to provide abortion services or information.

14. A certificate of need shall not be required for the transfer of ownership of an existing and operational health facility in its entirety.

15. A certificate of need may be granted to a facility for an expansion, an addition of services, or a new institutional service[, or for a new hospital facility which] that provides for something less than that which was sought in the application.

16. The provisions of this section shall not apply to facilities operated by the state, and appropriation of funds to such facilities by the general assembly shall be deemed in compliance with this section, and such facilities shall be deemed to have received an appropriate certificate of need without payment of any fee or charge. The provisions of this subsection shall not apply to hospitals offering long-term care services operated by the state and licensed under this chapter, except for department of mental health state-operated psychiatric hospitals.

17. Notwithstanding other provisions of this section, a certificate of need may be issued after July 1, 1983, for an intermediate care facility operated exclusively for the intellectually disabled.

[18. To assure the safe, appropriate, and cost-effective transfer of new medical technology throughout the state, a certificate of need shall not be required for the purchase and operation of:

(1) Research equipment that is to be used in a clinical trial that has received written approval from a duly constituted institutional review board of an accredited school of medicine or osteopathy located in Missouri to

establish its safety and efficacy and does not increase the bed complement of the institution in which the equipment is to be located. After the clinical trial has been completed, a certificate of need must be obtained for continued use in such facility; or

(2) Equipment that is to be used by an academic health center operated by the state in furtherance of its research or teaching missions.]

197.320. The committee shall have the power to promulgate reasonable rules, regulations, criteria and standards in conformity with this section and chapter 536 to meet the objectives of sections 197.300 to [197.366] 197.367 including the power to establish criteria and standards to review new types of [equipment or service] services. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 197.300 to [197.366] 197.367 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

354.095. 1. A corporation subject to the provisions of sections 354.010 to 354.380 may, in the discretion of its

board of directors, limit or define the classes of persons who shall be eligible to become members or beneficiaries, limit and define the benefits which it will furnish, and may define such benefits as it undertakes to furnish into classes or kinds. It may make available to its members or beneficiaries such health services, or reimbursement therefor, as the board of directors of any such corporation may approve; if maternity benefits are provided to any members of any plan, then maternity benefits shall be provided to any member of such plan without discrimination as to whether the member is married or unmarried, and if maternity benefits are provided to a beneficiary of any plan, then maternity benefits shall be provided to such beneficiary of such plan without discrimination as to whether the beneficiary is married or unmarried.

2. [If an ambulatory surgical facility as defined by subdivision (2) of section 197.200, has received a certificate of need as provided in chapter 197,] A health services corporation shall provide benefits to [the facility] an ambulatory surgical center, as defined by section 197.200, on the same basis as it does to all other health care facilities, whether contracting members or noncontracting members. A health services corporation shall use the same standards that are applied to any other health care facility within the same health services area in defining the benefits that the corporation will furnish to the ambulatory surgical facility, the classes to which such benefits will be furnished, and the amount of reimbursement.

[197.366. The term "health care facilities" in sections 197.300 to 197.366 shall mean:

- (1) Facilities licensed under chapter 198;
- (2) Long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012;

- (3) Long-term care hospitals or beds in a long-term care hospital meeting the requirements described in 42 CFR, section 412.23(e); and
- (4) Construction of a new hospital as defined in chapter 197.]